

SECTION 102 - BIDDING REQUIREMENTS AND CONDITIONS

Make the following amendments to said Section:

(I) Amend 102.01 Prequalification of Bidders to read as follows:

"102.01 Prequalification of Bidders. Prospective bidders shall be capable of performing the work for which they are bidding.

According to Section 103D-310, HRS, each prospective bidder shall file written notice of its intention to bid no later than 4:30 P.M., 10 calendar days before the bid opening date (not including the bid opening date), at the Contracts Office, Department of Transportation, 869 Punchbowl Street, Honolulu, Hawaii 96813. If the tenth day is on a Saturday, Sunday, or State holiday, the Notice of Intention to Bid is due on the last working day before the due date. Mailed notice must be received in sufficient time to meet the deadline set above. Faxed notice is acceptable provided the Contracts Office receives the faxed notice within the time stated above. The fax number is (808) 587-2132. It is the bidder's responsibility to ensure that the Contracts Office receives the Notice of Intent on time and in a legible condition.

According to said Section 103D-310, the Department may require any prospective bidder to submit answers to questions contained in the 'Standard Qualification Questionnaire For Prospective Bidders On Public Works Contracts' on the form furnished by the Department, properly executed and notarized, setting forth a complete statement of the experience of such prospective bidder and its organization in performing similar work and a statement of the equipment proposed to be used, together with adequate proof of the availability of such equipment. Whenever it appears to the Department, from answers to the questionnaire or otherwise, that the prospective bidder is not fully qualified and able to perform the intended work, the Department will, after affording the prospective bidder an opportunity to be heard and if still of the opinion that the bidder is not fully qualified to perform the work, refuse to receive or consider any bid offered by the prospective bidder. All information contained in the answers to the questionnaire shall be kept confidential. Questionnaire so submitted shall be returned to the bidders after serving their purpose.

Failure to complete the prequalification questionnaire will be sufficient cause for the Department to disqualify a prospective bidder.

No person, firm or corporation may bid where (1) the person, firm, or corporation, or (2) a corporation owned substantially by the person, firm, or corporation, or (3) a substantial stockholder or an officer of the corporation, or (4) a partner or substantial investor in the firm is in arrears in payments owed to the State of Hawaii or its political subdivisions or is in default as a surety or failure to do faithfully and diligently previous contracts with the State."

(II) Amend **102.04 Estimated Quantities** by revising the last sentence of the last paragraph to read as follows:

"The Department may increase, decrease, or omit each scheduled quantities of work to be done and materials to be furnished. When the Department increases or decreases the estimated quantity of a contract item by more than 15% the Department will make payment for such items according to Subsection 104.09 - Method of Price Adjustment."

(III) Amend **102.08 Proposal Guaranty** to read as follows:

"102.08 Proposal Guaranty. The Department will not consider a proposal of \$25,000 or more unless accompanied by:

- (1) a deposit of legal tender; or
- (2) a valid surety bid bond, underwritten by a company licensed to issue bonds in the State of Hawaii, in the form and composed, substantially, with the same language as provided herewith and signed by both parties; or
- (3) a certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, or official check drawn by, or a certified check accepted by and payable on demand to the State by a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA).
 - (a) The bidder may use these instruments only to a maximum of \$100,000
 - (b) If the required security or bond amount totals over \$100,000 more than one instrument not exceeding \$100,000 each and issued by different financial institutions shall be acceptable.
 - (c) The instrument shall be made payable at sight to the Department of Transportation, State of Hawaii.

According to Section 103D-323, HRS, the above shall be in a sum not less than 5% of the amount bid."

(IV) Amend **102.12 Disqualification of Bidders** to read as follows:

"102.12 Disqualification of Bidders. The Department may disqualify a bidder and reject its proposal for the following reasons:

- (1) Submittal of more than one proposal whether under the same or different name.

- (2) Evidence of collusion among bidders. The Department will not recognize participants in collusion as bidders for any future work of the Department until such participants are reinstated as qualified bidders.
- (3) Lack of proposal guaranty.
- (4) Submittal of an unsigned or improperly signed proposal.
- (5) Submittal of a proposal without a listing of subcontractors or containing only a partial or incomplete listing of subcontractors.
- (6) Submittal of an irregular proposal according to Subsection 102.07 - Irregular Proposals.
- (7) Evidence of assistance from a person who has been an employee of the agency within the preceding two years and who participated while in State office or employment in the matter with which the contract is directly concerned, pursuant to Section 84-15, HRS."
- (V) Delete **Section 102.14 - American Products Preference** in its entirety.
- (VI) Amend **102.15 Declaration of Non-Collusion** to read as follows:
- "102.15 (Unassigned)."
- (VII) Amend **102.16 Substitution of Materials and Equipment** to read as follows:
- "102.16 **Substitution of Materials and Equipment.**
- (A) **Substitution Before Bid Opening.**
- (1) **General.** When brand names of materials or equipment are specified in the contract documents, they are to indicate a quality, style, appearance, or performance and not to limit competition. The bidder shall base its bid on one of the specified brand names unless alternate brands are qualified as equal or better in an addendum. Qualification of such proposed alternate brands shall be submitted in writing and addressed to the Contracts Officer. The face of the envelope containing the request must be clearly marked 'SUBSTITUTION REQUEST'. The request may be hand-carried or mailed to the DOT Contracts Office, Room 105, 869 Punchbowl Street, Honolulu, Hawaii 96813. In either case, the written request must be received by the DOT Contracts Office no later than 14 calendar days before the bid opening date, not including the bid opening date. The written request will be time

stamped by the DOT Contracts Office. For the purpose of this section, the time designated by the time stamping device in the DOT Contracts Office shall be official. If the written request is hand-carried, the bearer is responsible to ensure that the request is time stamped by the DOT Contracts Office.

Submit 5 sets of the written request, technical brochures, and a statement of variances.

An addendum will be issued to inform all prospective bidders of any accepted substitution in accordance with Subsection 102.21 – Addenda and Bid Clarification.

(2) Statement of Variances. The statement of variances must list all features of the proposed substitution that differ from the contract documents and must further certify that the substitution has no other variant features. The brochure and information submitted shall be clearly marked showing make, model, size, options, and any other features requested by the Engineer and must include sufficient evidence to evaluate each feature listed as a variance. A request will be denied if submitted without sufficient evidence. If after installing the substituted product, an unlisted variance is discovered, the Contractor shall immediately replace the product with a specified product at no cost to the State.

(3) Substitution Denial. Any substitution request not complying with the above requirements will be denied.

(B) Substitution After Bid Opening. Substitution of material or equipment will not be allowed after the bid opening date except under the following circumstances:

- (1)** A specified or pre-qualified item is delayed by a lengthy strike in the factory or other unforeseeable contingency beyond the control of the Contractor which would cause an abnormal delay in the project completion.
- (2)** A specified or pre-qualified item is found to be unusable or discontinued due to change or other circumstances.
- (3)** If the Contractor is willing to provide a more recently developed or manufactured item of material or equipment of the same manufacturer which the Director determines to be equal or better than the one specified or pre-qualified.

A substitution request, regardless of reason, shall be fully explained in writing, by the Contractor and shall include his justification for said request, the quantities and unit prices involved, quotations and such other documents as are deemed necessary to support the request. Substitutions allowed pursuant to this provision, with the exception of the circumstance described under 102.16(B)3, do not qualify as value engineering. Any savings in cost will accrue to the State except where value engineering applies, and the Contractor will pay for any additional cost for the substituted items.

The burden of proof as to the comparative quality and suitability of alternate equipment, articles or materials shall be upon the Contractor. The Contractor shall furnish, at no cost to the State, all information required by the Director. The above shall not be construed to mean that substitution for or permitting the use of brand name will be allowed.

The Director reserves the right to deny any request deemed irregular or not in the best interest of the State and shall be the sole judge of the comparative quality and suitability of alternates. The Director's decision is final."

(VIII) Add the following:

"102.18 Preferences.

(A) Preference for Hawaii Products. The bidder's attention is directed to Sections 103D-1001 and 103D-1002, HRS and Subchapter 1, Chapter 124, Subtitle 11 of Title 3, HAR which provide preferences for Hawaii Products. According to Section 103D-1002, HRS, the bidder may examine the Hawaii Products List at the State Procurement Office, State Office Building, 1151 Punchbowl Street, Honolulu, Hawaii 96813.

If a product listed in the Hawaii Products List is available and meets project specifications, such product will be designated in the contract documents as a qualified product which may be used in the performance of the project.

If the bidder intends to claim preference for products on the Hawaii Product List and such is not listed, the bidder shall immediately notify the Contracts Office, Department of Transportation, so the Engineer may take corrective or other appropriate actions.

It is further understood by the bidder that if the bidder elects to furnish qualified Hawaii Products, and is awarded the contract, then fails to use such products or meet the requirements of such preference, the bidder shall be subject to the statutory penalties, provided in Section 103D-1002, HRS, and such other remedies as may be available to the State.

For the purpose of determining the lowest bid price only, the provisions of Section 103D-1002, HRS., shall apply. Any contract awarded or executed in violation of Section 103D-1002, HRS, shall be void and no payment shall be made on account of such contract.

(B) Preference for Recycled Products. Recycled Products shall not apply to this project.

(C) Evaluation Procedures and Contract Award. For bid evaluation, the Engineer will evaluate the bids by applying the applicable preferences selected by the bidders according to the contract. The Engineer will base the calculations for adjustments upon the original bid prices offered.

The Engineer will award the contract to the responsible bidder submitting the responsive bid with the lowest evaluated bid price. The contract amount of the contract awarded shall be the original bid price offered exclusive of any preference.

102.19 Certification for Safety and Health Program for Bids in excess of \$100,000. According to Section 396-18 of the Hawaii Revised Statutes, the bidder or offeror, by signing and submitting this proposal, certifies that a written safety and health plan for this project will be available and implemented by the notice to proceed date for this project. Details of the requirements of this plan may be obtained from the State Department of Labor and Industrial Relations, Occupational Safety and Health Division (HIOSH).

102.20 Tax Clearance. All bidders should submit original tax clearance certificates or certified copies from the Department of Taxation (DOTAX) and the Internal Revenue Service (IRS) with their bid proposals when the bid is \$25,000 or more. Bidders are required to provide a tax clearance prior to entering into a public contract of \$25,000 or more, pursuant to ACT 352, SLH 1997.

Tax clearances may be obtained by completing the Tax Clearance Application (Form A-6) and submitting it to the DOTAX or the IRS. The application may be obtained from the DOTAX, or the IRS. The application may be mailed in or walked in to either the DOTAX or the IRS. Both tax agencies encourage the use of their mail-in process, which should be completed within 21 calendar days. Tax clearance certificates will be issued to the applicant upon determination that the applicant has filed all tax returns due, and has paid all amounts owing on such returns, including penalty and interest."

Only original tax clearances or certified copies will be accepted for this purpose. Failure to submit the required tax clearance certificates will be sufficient grounds for the State to refuse to receive or consider the prospective bidder's proposal.

Tax clearance certificates are valid for 6 months. The validity period will begin with the later approval date stamped on the tax clearance.

The tax clearance submitted with the bid proposals must be valid on the solicitation's first legal advertisement date or any date thereafter up to the bid opening date. Valid tax clearances submitted with the proposal will remain valid for the contract award and encumbrance.

If a business cannot obtain a tax clearance certificate because of tax delinquencies, it may submit a 'special letter' from DOTAX and/or the IRS. The 'special letter' may only be obtained if

- (1) the business has an existing installment agreement with the tax agency, or
- (2) the delinquency is the subject of an administrative or judicial appeal.

The bidder is cautioned that the 'special letter' from the IRS must be certified by DOTAX. All conditions applied to tax clearance certificates for this purpose are applicable to these 'special letters'. Instructions to obtain the 'special letter' are available from each respective tax agency.

Various combinations of tax clearance certificates and 'special letters' are acceptable for this purpose as follows:

- (1) Tax clearance signed by both tax agencies;
- (2) Individual tax clearance certificates from each tax agency, respectively;
- (3) Tax clearance certificate from one tax agency and a 'special letter' from the other tax agency; or
- (4) 'Special letter' from both tax agencies."

END OF SECTION